

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON D.C.**

In the Matter of

Telephone Number Portability

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CC Docket No. 95-116

REPLY COMMENTS OF THE ILLINOIS CITIZENS UTILITY BOARD

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The Illinois Citizens Utility Board submits these Reply Comments to the Petition for Declaratory Ruling of the Cellular Telecommunications & Internet Association (“CTIA”) filed on May 13, 2003 (“Petition”). The Citizens Utility Board (“CUB”) responds to several parties that submitted comments on June 13, 2003.

INTRODUCTION

Initially, CUB states that it agrees with Quest and other commenters that CTIA’s Petition is procedurally faulty. CTIA’s Petition for Declaratory Ruling is an inappropriate procedural vehicle to address the issues that CTIA requests the Federal Communications Commission (“FCC”) to address.¹ The Commission currently has rules in place that govern porting intervals and interconnection agreements for local exchange carriers (“LECs”). What CTIA is really requesting is for the Commission to either change the rules for wireless carriers or develop new rules, as the CTIA either simply does not like the rules that exist, or it does not believe the Commission’s current procedures apply to wireless carriers. In the current proceeding, the Commission does not have a sufficient record of evidence in order to determine whether wireless carriers should have different rules in this regard. Procedurally, the Commission could initiate a

rulemaking to address this issue on a going forward basis at some point in the future. However, the Commission need not act on CTIA's Petition at any point in the immediate future in order for wireless portability to begin on November 24, 2003, nor should it act, as the Petition is procedurally flawed.

LNP has inherent limitations

As CUB pointed out in its comments to CTIA's January 2003 Petition for Declaratory Ruling, the implementation of local number portability is currently limited in the wireline industry.² Because of the "rate center problem", neither wireless nor wireline carriers can port a number from one rate center to another.³ Therefore, even with the current wireline LNP up and running, the ability of a wireline customer to port his number is limited by geographical location. These limitations are simply inherent in the way the system was set up, primarily for routing and rating purposes. Most customers are generally aware of the limitations of porting in the wireline forum, though they may not realize the underlying cause. Yet despite these limitations, wireline LNP has proceeded and has allowed the Congress' 1996 competitive telecommunications mandate to be implemented throughout the country.⁴

In contrast, the occurrence of wireline to wireless portability is likely to be an anomaly for the time being. The only voices currently expressing concern about the intermodal portability issue appear to be wireless service providers. None of the consumer or governmental groups that filed comments on this Petition, or for that matter CTIA's January Petition, argued that issues impacting intermodal local number portability("LNP") should be addressed before the

¹ Quest states in its Comments that "since existing Commission rules incorporate the current wireline porting intervals, the APA requires that a further rulemaking be conducted to change them," citing 47 C.F.R. § 1.2.

² See Comments of the Citizens Utility Board (filed February 26, 2003) in the instant docket.

³ *Id.*

⁴ See 47 U.S.C. § 251(b).

deadline for wireless intramodal portability should begin. Customer demand for wireless to wireless portability, on the other hand, is strong and vocal, as is illustrated in the Telephia study cited by the Wireless Consumers Alliance stating that 40% of wireless customers stay with their wireless carrier because they do not want to change their phone number.⁵ This is a significant statistic, because it represents nearly a majority of customers that are limited from taking advantage of the Congress' 1996 mandate for telecommunications competition due to the lack of wireless LNP.⁶

The wireless industry has fought long and hard to reverse the LNP rule for many reasons, not the least of which is that wireless providers are well aware of the likely increase in churn as a result of greater customer choice and they don't want to lose customers. In fact, First Cellular of Southern Illinois points to an industry analysis that predicts wireless subscriber churn to dramatically increase when the LNP rules go into effect this November.⁷ Churn may affect the wireless marketplace. However, this is no reason to forestall the imposition of wireless LNP. CUB does support the development of intermodal portability – just not at the expense of the wireless industry meeting the November 2003 deadline for intramodal wireless portability. The Commission must not treat the issues cited in CTIA's Petition as obstacles to wireless portability.

FCC's Fourth Report and Order addresses several of CTIA's concerns

The FCC's Fourth Report and Order in Docket No. 99-200, issued on June 18, 2003 during the comment period, answers several of the questions raised by CTIA in its May 13, 2003 Petition for Declaratory Ruling. In its latest Number Resource Optimization Order, the FCC

⁵ Comments of the Wireless Consumers Alliance, Inc. at 2.

⁶ See 47 U.S.C. § 251(b).

⁷ Comments of First Cellular of Southern Illinois at 5, *citing* "WNLP: Understanding Number Portability & Its Impact on Wireless Churn," In-Stat/MDR (July 2002).

reaffirms its previous ruling that carriers “must deploy LNP in switches within the 100 largest MSAs for which another carrier has made a specific request for the provision of LNP.”⁸ Further, the FCC reaffirms that the 100 largest MSAs are those identified in the 1990 Census reports, as well as those MSAs identified in any subsequent U.S. Census report of the 100 largest MSAs.⁹ Thus, the Commission has already resolved several of the “outstanding CMRS-specific issues” identified in CTIA’s Petition, and those issues are now moot.

Wireless portability is in the public interest

In response to particular arguments presented in parties’ comments to CTIA’s Petition, CUB reiterates its position that wireless portability is in the public interest and therefore the November 2003 deadline should remain firm. Certain wireless carriers have identified issues that may a concern for customers, but these issues have business and legal solutions that need not postpone the deadline for wireless portability. For example, Verizon Wireless points to a consumer issue regarding potential abuses of the portability standard. Verizon Wireless recommends that the Commission “ensure a level playing field for porting by confirming that one carrier will not be allowed to implement portability subject to restrictive conditions, such as refusing to port to a customer who has an unpaid balance...”¹⁰ Similarly, Cingular Wireless comments that “for the past few years, Cingular’s service agreements with its customers specify that Cingular is not obligated to transfer a telephone number if the customer’s account is not paid in full.”¹¹ CUB is concerned that a carrier would use any opportunity to prevent a port from going forward. Carriers should not be allowed to demand payment in full before fulfilling a

⁸ Fourth Report and Order in CC Docket No. 99-200 and CC Docket No. 95-116, and Fourth Further Notice of Proposed Rulemaking in CC Docket No. 99-200, CC Docket No. 99-200 (rel. June 18, 2003) ¶

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⁹ *Id.* at ¶ 2.

¹⁰ Comments of Verizon Wireless at 4.

¹¹ Comments of Cingular Wireless, LLC at 21.

porting request where there is no history of bad credit on the part of the customer. Otherwise, virtually every instance of porting would be adversely affected.

This is a significant potential problem that the Commission should address in the future. However, the Commission need not specifically address the issue before wireless porting begins. In fact, implementing certain business practices could largely solve the potential billing disputes, like properly notifying and training customer service representatives to notify prospective and existing customers of their policy toward terminating contracted service in the event of a port. Likewise, with regard to the E911 problem that CTIA claims exists in context with the porting interval, CUB agrees with Verizon that even if the wireless provider chooses to use a shorter porting interval, the wireless provider should notify their customer that the E911 function will be impaired during the porting interval, and the length of that interval. The Commission should not allow these potential abuses to interfere with free and full customer choice.

The Commission should ignore Sprint's plea for an additional seven weeks

Sprint properly recollects that the November 2002 deadline, set by the Commission in 1999, was chosen because November 24, 2002 was the conclusion of the five-year FCS buildout period.¹² However, Sprint then goes on to suggest that, because November is in the middle of the industry's busy season, full implementation of portability should not be realized until seven weeks after November 24th. Sprint's suggestion is not surprising, considering that the wireless "busy season", a big time for promotions and special offerings in the wireless industry, would be a most opportune time for an unhappy wireless customer to switch service providers. Sprint naturally would want to avoid the additional, and immediate, churn that wireless portability will likely promote. This is not, however, a legitimate issue for the Commission to consider.

¹² Sprint Comments at 21.

CONCLUSION

For the foregoing reasons, CUB respectfully requests that the Commission reject CTIA's request for declaratory ruling and maintain the current schedule for wireless LNP deployment.

Respectfully Submitted,

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